

	OAH 8-2000-20088-2 (Brown) OAH 8-2000-20089-2 (Steele)

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Trespass Citation Issued to Benjamin Dale Browne	NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING
In the Matter of the Appeal of the Trespass Citation Issued to Bradley Allen Steele	

PLEASE BE ADVISED that a prehearing conference in these matters will be held by telephone conference call on **Tuesday, January 6, 2008**, beginning at **11:00 a.m.** and continuing until it is completed.

Participating in the prehearing conference telephone call will be the Appellants, Mr. Brown and Mr. Steele, the officer who issued the citation, Officer Eugene Wynn and the undersigned Administrative Law Judge. Judge Lipman's office is located at 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620. His telephone number is (651) 361-7842 and his electronic mail address is: eric.lipman@state.mn.us

By **4:30 p.m. on Monday, January 5, 2008**, the parties will contact Judge Lipman with the telephone numbers to be used during the conference call.

If you cannot participate in the call at the scheduled time, please contact Judge Lipman immediately.

The purpose of the prehearing conference telephone call is to determine the nature of the dispute that underlies the appeal and the best method to resolve the dispute. The telephone call is expected to last between fifteen (15) minutes and thirty (30) minutes. If the appeal cannot be resolved during the telephone call itself, then the Judge will set a time for a hearing. The Judge will also decide whether the hearing shall be held by telephone or in person.

The citation which is being appealed was issued pursuant to Minnesota Statutes § 97B.002. This statute provides that if a person requests a hearing in order to appeal a citation, the hearing shall be held according to the expedited administrative hearing process set forth Minnesota Rules 1400.8510 to 1400.8612.

Copies of Minnesota Statutes and Rules may be obtained from Minnesota's Bookstore, 660 Olive Street, St. Paul, Minnesota 55155, telephone: 651-297-3000. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found using the Internet at www.revisor.leg.state.mn.us/stats/. Online versions of Minnesota Rules may be found at www.revisor.leg.state.mn.us/arule/.

It is not necessary that a person be represented an attorney in order to participate in this case. Persons may, however, choose to be represented by legal counsel or any other representative of their choice.

Unless the Administrative Law Judge decides differently, the only participants in the prehearing conference telephone call will be the Appellants, Mr. Brown and Mr. Steele, and Officer Wynn. If a hearing is necessary, these persons will be the only two "parties."

Any other person who desires to become a party to this case must submit a timely petition to intervene pursuant to Minnesota Rule 1400.8570. This petition must show how that person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought, and shall indicate petitioner's statutory right to intervene if one should exist. If the petition is granted, and the petitioner is given full party privileges, then the petitioner will have the right to present evidence and witnesses, and will also have the right to question witnesses presented by the other parties. Even without filing a petition to intervene, any person may offer testimony or other evidence which is relevant to the case, but they are subject to being questioned by the parties. Generally, non-parties are not allowed to question witnesses provided by the parties.

If a hearing is held, the Administrative Law Judge and the Commissioner can base their decision only on factual information or evidence that is part of the hearing record. Persons participating in the hearing should have available all documents, records, witnesses and any other evidence they need to present their position. Subpoenas may be available to compel the attendance of witnesses or other production of documents. (See, Minnesota Rule 1400.8601 for the procedures regarding subpoenas).

If a Hearing is held, the Administrative Law Judge will issue a recommended decision. A copy of this decision will be sent to each party and to the Commissioner. After allowing at least five days to pass, the Commissioner will issue a final order in the matter. During the five-day period, the parties may file comments with the Commissioner regarding the Administrative Law Judge's recommended decision.

Failure to participate in the prehearing conference telephone call or failure to appear at the hearing will result in the citation being upheld. Fines are due within thirty (30) days of the issuance of the Commissioner's final decision, with no further opportunities for administrative appeal.

It is likely that an appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. For that reason, appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the applicable law. Please note that Minnesota Statutes § 116.072, subdivision 6 (d) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to Pat Watts, Policy and Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, Telephone (651) 259-5058.

Dated: December 4, 2008

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge